IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

MACA.No. 268 of 2007

OPMV.162/2002 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
.....

APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO. LTD,.
THIRUVANANTHAPURAM NOW REP. BY ITS
ADMINISTRATIVE OFFICER, REGIONAL OFFICE,
M.G.ROAD, KOCHI-11.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/APPLICANTS:

1. SURESH BABU, S/O. CIJA RAJAN,TC.4/1292,
SUN HOUSE, PARAMBUKONAM, KOWDIAR,
THIRUVANANTHAPURAM.

2. SREEKUMARI, W/O. SURESH BABU -DO- -DO-.

3. GOPIKA SURESH (MINOR),
D/O. SREEKUMARI THANKACHI -DO- -DO-. (MINOR 3RD
RESPONDENT IS REP.BY HER MOTHER 2ND RESPONDENT).

(NO RELIEFS ARE CLAIMED AGAINST RESPONDENTS 1 AND
2 IN THE ORIGINAL PETITION AND HENCE THEY ARE NOT
MADE PARTIES IN THIS APPEAL).

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20/07/2007 ALONG WITH MACA NO.1201 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.367/2007 IN MACA 268/2007

DISMISSED

20.7.2007

SD/-J.B.KOSHY, JUDGE
SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

J.B.Koshy & K.P.Balachandran, JJ.

M.A.C.A.Nos.268 & 1201 of 2007

JUDGMENT

Koshy, J.

A five year old boy died in a motor traffic accident on 1.3.2000 at about 10.45 p.m. due to the negligence of the driver of the vehicle insured by the appellant Insurance Company in M.A.C.A.No. 268/07. Against a claim of Rupees nine lakhs, the Tribunal awarded only Rs.2,75,000/-. The Tribunal has awarded Rs.2,40,000/- for loss of dependency, taking Rs.16,000/- as the yearly loss of dependency, treating Rs.24,000/- as the notional annual income. The only dispute raised by the Insurance Company in the appeal is that the notional income under the second schedule was only Rs.15,000/- and also pointed out the decision in **Suni Manoj Mathew v. B.F.E.F. Rajadhani** (2007 ACJ 156 (SC)), wherein the Apex Court fixed Rs.1,85,000/- as compensation for loss of

dependency in the case of a child. Fixation of compensation in each case will be different depending upon the facts and circumstances of the case. In this case, evidence was adduced to show that the parents of the deceased boy were well placed and the boy was studying in Infant Jesus English Medium School, which is a reputed school in Trivandrum city, as can be seen from Exhibit A6 certificate. It is also submitted that he was the only son (there is a girl child to the parents, who is the third claimant). Exhibit A5 certificate was issued by a Gynaecologist, which shows that the mother of the deceased boy had undergone sterilization operation and there is no chance for reversal of sterilization. It is the contention that the girl child will be married away and in their old age they will have to depend upon the son, who was lost in the accident. Further, the mother of the child was only 39 years old. Taking guidelines from the second schedule, 15 was taken as the multiplier. We also note that Rs.15,000/- was fixed as the annual notional income in the

second schedule in the year 1994. The accident occurred after about six years and the status of the parents, the position the child is to be, etc. have to be considered while fixing the notional income of a non earning child. Taking all the aspects of the case and considering the total compensation granted, we are of the view that there is no compelling reasons to interfere in the assessment of compensation made by the Tribunal in an appellate proceedings.

2. M.A.C.A.No.1201/07 is filed by the claimants seeking enhancement of compensation. We have already found that what is ordered by the Tribunal is just and reasonable. The claim for enhancement cannot be accepted.

In the above circumstances, both the appeals are dismissed.

(J.B.Koshy, Judge)

20th July, 2007

(K.P.Balachandran, Judge)

tkv